

Foreign report

Dangerousness: a novel approach

ALLEN A. BARTHOLOMEW, Forensic Psychiatrist, Suite 1, 8th Floor, 118 Queen Street, Melbourne 3000, Australia

The problem of dealing with the individual considered to be dangerous is very real and not the least difficulty being the matter predicting the degree of dangerousness if one accepts that dangerousness can be predicted at all.¹

Recently, in Victoria, a case came to the attention of the State Government which led to some most unusual legislation concerned with the containment of a man predicted to be violent and who threatened gross violence.

The man concerned, Garry Ian David (also known as Garry Ian Webb)² was born in 1954, was brought up in a hopelessly broken home and was aged some five years when sent to a boys' home where he suffered much abuse, both generally and sexually. He graduated from boys' homes to prison and while in prison from 1969 to 1980 he indulged in self-mutilation to a quite gross extent and he was, at intervals, "certified" pursuant to the provisions of the Mental Health Act 1959, S.52. In June 1980 he accepted voluntary admission to a mental hospital and a paragraph of the referral letter reads:

Over the last two months or so Garry has been very well controlled but prior to that he has been grossly self-mutilatory—cut off ears, nipples, cut through both tendo-achilles. Also swallowing etc.

He stayed in hospital a matter of a day or two and then left. He travelled to Melbourne and at some time, or times, he claimed he drank an infusion of the shrub *Datura*. He stole a gun with the intention to have a "shoot out" with police which would end with his death. He went to a police station that night but found it shut and he travelled and came upon a Pizza Parlour where he shot a woman and a policeman, the woman becoming a quadraplegic. Garry was convicted on two counts of wounding with intent to commit murder, burglary and theft of a motor car.

While on remand he was "certified" on several occasions for such behaviour as cutting through his ankles, threatening to slash his testicles, cutting off his penis, inserting foreign bodies into his shortened urethra and threatening to gouge out his eyes. He was sentenced in the Supreme Court to imprisonment for

14 years with a minimum of 12 before being eligible for consideration for parole.

During his sentence Garry made a number of threats to cause mayhem and murder when he was released. These threats had a marked impact on society as in 1987 there had been two "massacres" in Melbourne when two gunmen went "berserk" and both shot and killed a number of law-abiding citizens.³ He wrote as follows:

Situation 4: Candy bar and cigarette machines dispensing human fingers, toes, eyeballs, etc. Some frozen in chocolate blocks

Situation 48: Recreate Hoddle Street, Queen Street, Russell Street and Walsh Street massacres. Create similar situations with at least as high as previous death tolls, in the exact locations, (and if possible as close to same dates as previous massacres; preferable but not absolute necessity.)⁴

It was suddenly realised (about December 1989) that the day was rapidly approaching when Garry would have to be released into the community; indeed, on 3 February 1990.

Cutting the story short it may be stated that Garry David was "certified" pursuant to the Mental Health Act 1986 S.16(3)(b) and was removed from the prison and admitted into a mental hospital as an involuntary patient.⁵ Garry promptly appealed against his "certification"⁶ and the appeal was heard by a Division of the Mental Health Review Board. It has to be appreciated that the Mental Health Act 1986 contains *no* definition of "mental illness" although the Act demands that the patient be mentally ill before being "certifiable". The Mental Health Review Board, after a long hearing, found that the diagnosis relating to Garry David was that of a "personality disorder" which was not a mental illness—not even the diagnosis of a "borderline personality disorder" was to be considered a mental illness—and it was also found that such a diagnosis, even if it were considered to be a mental illness, was not susceptible to any treatment.

The problems of keeping Garry David in custody were various but really came down to two options. The first was to suitably amend the Mental Health Act 1986 and this was the option favoured by the

Law Reform Commission of Victoria. They recommended the enactment of a sub-section (4) to section 8:

(4) Sub-section (2)(1) does not prevent a person who has only an anti-social personality disorder from being considered to be mentally ill.

This suggestion did not meet with the favour of what has been termed by the Government the "health industry".

The Government chose, in its wisdom, another course: the passing of an Act entitled the Community Protection Act, 1990. Under the heading "Purpose" S.1 reads:

The purposes of this Act are:

- (a) to provide for the safety of members of the public and the care or treatment and the management of Garry David, a person who has been convicted of attempted murder and other offences and is, or has been, in a psychiatric in-patient service; and
- (b) to provide for proceedings to be initiated in the Supreme Court for an Order for the detention of Garry David.

Section 8 reads:

(1) If, on an application under this Act, the Supreme Court is satisfied, on the balance of probabilities, that Garry David:

- (a) is a serious risk to the safety of any member of the public; and
 - (b) is likely to commit any act of personal violence to another person –
- the Supreme Court may order that Garry David be placed in preventive detention.

(2) An Order under sub-section (1) –

- (a) must specify –
 - (i) a psychiatric in-patient service within the meaning of the *Mental Health Act* 1986; or
 - (ii) a prison within the meaning of the *Corrections Act*; or
 - (iii) another institution of detention – in which Garry David is to be detained; and
- (b) must specify the period, not exceeding 6 months, for which Garry David must be detained.

Section 16 of the Act reads:

This Act expires on the first anniversary of the day on which it receives the Royal Assent.

As a result of this Act Garry David was locked up in preventive detention, at first in a secure ward in a psychiatric hospital but more recently in a wing of the prison in Melbourne, HMP Pentridge. It has been suggested that Garry David should be held in a "one-

man jail planned for construction" and possibly available in September. This plan has been criticised on the basis of the cost for one prisoner and could, no doubt, be criticised in terms of being "cruel and unusual" or somewhat similar sentiments.

Quite recently Garry David again appeared before the Supreme Court that his detention might be continued until the Act expires. During the hearing counsel for the Attorney-General stated:

The State Government will ask Parliament next week to extend by three years the Community Protection Act, which was enacted to keep Garry Webb in custody.

This was done with the passing of the Community Protection (Amendment) Act 1991. This amendment enacts that S.8(2)(b) and S.9(a) of the Principal Act shall read 12 months rather than six months, and that S.16 of the Principal Act shall read "fourth anniversary" rather than "first".

It was also observed⁷ that:

a spokeswoman for Mr. Kennan (Attorney-General) . . . said the Government was still considering a proposed Dangerous Person Act, which could apply to other individuals.

It is submitted that while this somewhat "novel and drastic legislation" may, in fact, serve its immediate purpose, there is very little else to commend it. There is nothing to commend a number of gross personality disordered persons with their own personal Act of Parliament endeavouring to persuade Supreme Court judges that their mental state has improved sufficiently to be taken out of preventive detention.

Notes

1. See Bartholomew, A. A., *Psychiatry, The Criminal Law and Corrections*. Wileman Publications, Melbourne (1986) pp. 193 et seq.
2. The name of the man concerned may be used as his name is used in the Community Protection Act 1990.
3. The "Hoddle Street massacre" (see *R V Knight* [1989] VR 705 and Coroner's findings in *Vitkovic* who died in the "Queen Street massacre" case No. 5353/87.
4. "Russell Street" concerned the bombing of a major police complex and "Walsh Street" concerned the killing of two police officers.
5. He was also remanded in custody for the alleged offence of threatening to kill a former prison inmate.
6. This appeal was suggested to the prisoner/patient by the certifying psychiatrist who wished to have the mental health legislation tested.
7. *The Age* (Melbourne) 6 March 1991.

A full list of references is available from the author on request.